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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-00-256-53295

Office: Vermont Service Center

Date:

JAN 14 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

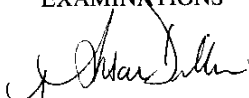
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Medicare certified rehabilitation service with 7 employees and a gross annual income of \$690,000. It seeks to extend its authorization to employ the beneficiary as a manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had not demonstrated that the proffered position requires the theoretical and practical application of a highly specialized body of knowledge. On appeal, counsel asserts that the director has already determined that the proffered position is a specialty occupation in that the director previously approved the initial petition and subsequently authorized the petitioner to continue to employ the beneficiary for an additional three years. Counsel submits various documents relating to the beneficiary's education and training, along with copies of job advertisements for managers.

With respect to counsel's objection to denial of this petition in view of the previous approval of two petitions in the beneficiary's behalf, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. Upon further review, it appears that the initial petition and the subsequent petition to extend the beneficiary's H1B status were both approved in error.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the

Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will assist the president in (a) hiring and scheduling of therapists; (b) sales of services; (c) negotiating of contracts with nursing homes to provide services, oversee and assist with Medicare billing and recommend additions to equipment.

In response to a Service request for additional information, the petitioner provided the following amended description of the duties of the proffered position:

- * Employing working personnel
- * Co-ordinating the benefit package of the employees;
- * Ensuring that the rules and regulations governing the company are upheld by all employees;
- * Scheduling of the therapists;
- * Co-ordinating the activities of the billing department;
- * Researching possible ways through which the company's growth can be enhanced;
- * Serve as a liaison officer between the company and the patients;
- * Collection of the company's debt (Accounts receivable);
- * Attending to the Accounts payable;
- * Recommending and purchasing the equipment needed in the company;
- * Attending to the Director's correspondence; and
- * Assisting the Director in contract negotiation and implementation.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in business administration. The offered position combines the duties of a general manager or executive with those of a human resources manager. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in company training programs are often considered as important as a specific formal academic background.

Similarly, a review of the Handbook at pages 59-60 finds no requirement of a baccalaureate degree in a specialized area for employment as a human resources manager. The Handbook states:

Because of the diversity of duties and level of responsibility, the educational backgrounds of human resources ... managers vary considerably. In filling entry-level jobs, employers usually seek college graduates. Many employers prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background or a well-rounded liberal arts education.

It is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The petitioner asserts that, as a certified provider of rehabilitation services under the federal Medicare program, it is

required to employ an administrator who holds at least a bachelor's degree and submits a portion of the pertinent federal regulations. The regulations state that a person employed as an administrator of an outpatient physical therapy services must have a bachelor's degree and related training or experience, but there is no stated requirement that the bachelor's degree must be in a specialized area.

The petitioner further asserts that its two previous managers have a bachelor's degree in business administration and human resources respectively. However, the petitioner has not provided any evidence to corroborate this assertion. Thus, the petitioner has not submitted sufficient documentation that it requires a bachelor's degree in a specialized area for the proffered position.

The petitioner submits four job advertisements for office managers. One of the three prospective employers is seeking an individual with a bachelor's degree in human resources; two employers state that a bachelor's degree is required, but they do not specify that the degree must be in a specialized area; the fourth employer states that a successful candidate for the position must have two to five years of administrative experience in a medical office and knowledge of coding and computers. As such, these job advertisements are not sufficient to establish that the degree requirement is common to the industry in parallel positions among similar organizations.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.